**Court No. 2**

**In the High Court of Uttaranchal at Nainital.**

**A.O. No. 129 of 2002**

Bajpur Co-operative Sugar Factory Ltd.
Through its General Manager, Bajpur,
District-Udhanm Singh Nagar, Uttaranchal.
.....Opp. party No.1/Appellant

**Versus**

(1) Workmen's Compensation Commissioner/
Dy. Labour Commissioner, Haldwani,
District-Nainital, Uttaranchal.
(2) Smt. Manpati W/o late Shivnath Yadav,
R/o Village-Sukna, Bhat Parani Post: Bhat Parani,
District-Deoria, Uttar Pradesh,
(3) Km. Sandhya D/o late Shivnath Yadav,
(4) Master Sonu S/o late Shivnath Yadav,
(5) Sri Harendra Patel S/o Sri Kundan Mohalla
.....Respondents.

**Sri R.K. Raizada & Sri C.K. Sharma, learned counsel for the appellant.**
**Sri Harendra Belwal, learned counsel for the respondent No. 2.**

**Dated: 21st Aug., 2004.**

**Hon'ble P.C. Verma, J.**
**Hon'ble B.S. Verma, J.**

This appeal has been filed by the appellant under Sec. 30 of Workmen's Compensation Act, 1923 against the order dated 08.04.2002 passed by the Workmen's Compensation Commissioner/Dy. Labour Commissioner, Haldwani, District-Nainital, (hereinafter referred to as the Commissioner) in Workmen Compensation Case no. 2 of 1996.

2- Brief facts giving rise to this appeal are that applicant Smt. Maanpati wife of late Shiv Nath Yadav filed a claim petition against opposite party No. 1/appellant to get compensation under the Workmen's Compensation Act, 1923 in which she has alleged that her husband was employed under the employment of Opp. Party No. 1 and on 21.10.1995 when he was working, he died in the accident

occurred in the factory. At the time of accident her husband was getting Rs. 2200/- per month as wages and at the time of death her husband was 30 years of age. Hence she is entitled for compensation on account of death of her husband.

3. The Workmen's Compensation Commissioner after recording the evidence awarded the claim petition of the applicant/claimant for a total sum of Rs. 3,57,725.00 including the amount of interest against the Opp.party No. 1-Bajpur Co-operative Sugar Factory Ltd. Feeling aggrieved, the Opp.party No. 1 has come up in this appeal.

4. The learned counsel for the appellant pressed the appeal on the ground that he deceased was a contractor labour in the employment of respondent No. 5, therefore, in case of any liability of the appellant to pay the amount of compensation to the respondent Nos. 2, 3 & 4, under Sec. 12(2) of the Workmen's Compensation Act, 1923 the appellant is entitled to be indemnified by the respondent No. 5 and further the wages of deceased Shivnath Yadav was Rs. 1000/- per month at the time of accident and the learned Commissioner awarded compensation on the basis of inadmissible evidence by the respondent No. 2 that wages of deceased was Rs. 2000/- per month and appellant has wrongly been held liable to pay the compensation.

5- We have perused the impugned judgment. The learned Commissioner has dealt with this point and gave its finding that on the basis of evidence it is clear that on 08.08.1995 a contract was given by the Manager of Bajpur Sugar Factory to Sri Harendra Patel for cleaning the Chimney of the Boiler of the Factory and also for painting work. The deceased was engaged by the contractor on daily wages. The said work was being done in the supervision of

the General Manger of the Sugar Factory. The Commissioner rightly held that the deceased died in the Factory at the time when he was doing the work of Factory. The employer also did not deny this fact in its written statement.

6- The attention of the learned Commissioner was also drawn to the provision of Sec. 12(2) of the Workmen's Compensation Act, 1923 and the learned Commissioner was fully agreed to the contention made by the learned counsel for the appellant and provided that the principal can recover the amount of compensation from the contractor by way of proceedings against him in the competent court. Section 12(2) of the Workmen's Compensation Act reads as under:-

> *"Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.*

*7*- The learned Commissioner on the basis of documentary evidence further held that the age of the deceased was 30 years at the time of accident and his monthly income as proved comes Rs. 2200/- at the rate of Rs. 110/- per day as daily labour but held the income of the deceased Rs. 2000/- as minimum for calculation to pay the compensation.

8- In view of the clear cut findings of the learned Commissioner, it does not lie in the mouth of the appellant to reiterate the matter before this Court. We find that the learned Commissioner after scrutinizing the evidence adduced by the parties awarded the compensation to the applicant/claimants fastening the liability on the appellant. Nothing has been shown to us on behalf of the appellant so as to warrant any interference with the findings arrived at by the learned Commissioner in the case under appeal. However, it is provided that if the appellant so desires, can take recourse to recover the compensation amount under Sec. 12(2) of the Workmen's Compensation Act.

9- Therefore, we find no illegality or infirmity in the impugned order. The appeal has no force and deserves dismissal on merit.

10- The appeal is dismissed. The order impugned in this appeal is affirmed.

**(B.S. Verma, J.) (P.C. Verma, J.)**

P.Singh